IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 7652 of 2007(J)

OS.773/2001 of PRL.M.C., KOTTAYAM

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PETITIONER: PLAINTIFF

SREEKUMAR, SREEVALSAM (PARAYIL) HOUSE,
AYMANAM VILLAGE.

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS: DEFENDANTS

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1. VIMAL KUMAR, PARAYILKANDATHIL HOUSE,
AYMANAM VILLAGE.

2. GIRIJA DEVI, PARAYILKANDATHIL
PUTHENPURAYIL HOUSE, AYMANAM VILLAGE.

3. PARUKUTTY AMMA, PARAYILKANDATHIL HOUSE,
AYMANAM VILLAGE.

4. ASHOK KUMAR, PARAYILKANDATHIL HOUSE,
AYMANAM VILLAGE.

5. RADHAKRISHNAN, PARAYILKANDATHIL HOUSE,
AYMANAM VILLAGE.

6. GEETHA, W/O.MURALI, NOW RESIDING AT
KOODARAPPALLIL HOUSE, NEAR KIDANGOOR TEMPLE,
KIDANGOOR SOUTH FROM PARAYILKANDATHIL HOUSE,
AYMANAM VILLAGE.

BY ADV. SRI.K.GOPALAKRISHNA KURUP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).7652/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE PLAINT IN O.S.773/2002 BEFORE THE PRINCIPAL MUNSIFF COURT, KOTTAYAM

EXT.P2- TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S.773/01.

EXT.P3- TRUE COPY OF THE AMENDMENT APPLICATION IN I.A.185/07 IN O.S.773/01 BEFORE THE PRINCIPAL MUNSIFF COURT, KOTTAYAM

EXT.P4- TRUE COPY OF THE OBJECTION TO THE AMENDMENT APPLICATON (IA.185/07 IN O.S.773/01 BEFORE THE PRINCIPAL MUNSIFF'S COURT, KOTTAYAM

EXT.P5- TRUE COPY OF the ORDER DATED 15.2.2007 IN I.A.185/07 IN O.S.773/01 BEFORE THE PRINCIPAL MUNSIFF'S COURT, KOTTAYAM

(TRUE COPY)

P.A TO JUDGE

M.N.KRISNAN, J.

W.P.(C). 7652/2007

Dated this 12th day of September, 2007

JUDGMENT

This writ petition is preferred against the order of the learned Munsiff, Kottayam in I.A.185/2007 in O.S.773/2001. By the said order, the learned Munsiff dismissed the application for amendment. The amendment application was filed by the plaintiff to amend the schedule and the body of the plaint etc., in tune with the plan and the report of the Commissioner submitted in the case. The learned counsel for the respondent would submit that it will amount to total change of the character of the suit and therefore, the Court below was perfectly justified in dismissing the application.

2. Heard the learned counsel on either side. A reading of the averments in paragraphs 2 and 3 would reveal that item No.4 of document No.81/86 has been set apart to the share of the plaintiff and that the access to that item according to the plaintiff is a way which his father had obtained by virtue of a document No.96/51. So in order to resolve controversy between the parties which is regarding the pathway, the question to be decided is,

about the way mentioned in document No.96/51. If so which is that way and what is the length and width of that way. Unless the plaintiff is able to establish all these facts, he will not be entitled to any relief. Now Commissioner has inspected the property and had given certain particulars. The plaintiff wants to amend the plaint in tune with the Commissioner's report. Even if the plaint is amended in tune with the Commissioner's report, ultimate relief depends upon the entitlement of the plaintiff to have a way as claimed by him. It is true if the Court ultimately finds that plaitiff is entitled to a way then there must be a definite way which is identifiable and so that it becomes an executable decree. Therefore, just because the plaint is amended in tune with the Commissioner's report, it does not ipso facto leads to the conclusion regarding his entitlement to have the property. So the apprehension expressed will not cause any difficulty. When an application for amendment is allowed, the incorrectness of the same can be pointed out by the defendant by filing written statement. Therefore, I do not feel that the amendment will change

the character of the suit and on the other hand it will give a clear picture of the property. The question whether it is the property that is covered by document No.96/51, is a matter which the Court has to decide after allowing the parties to produce documents and adducing evidence. If Court finds it is, then plaintiff may be entitled to a decree otherwise will not be.

3. Therefore, by allowing the amendment application, the character of the suit is not changed and I find it is really necessary for resolving controversy between the parties. Therefore the order under challenge is set aside and the amendment application is allowed. The defendant is permitted to file additional written statement. I make it very clear that the decision of the suit depends upon the entitlement of the plaintiff on the basis of the documents under which he claims the right of way.

M.N.KRISHNAN,
JUDGE

mrcs